

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
June 26, 2017 at 6:00 P.M.

PLEDGE OF ALLEGIANCE

MEMBERS PRESENT: Jeff Valiant, Chairman; Tina Baxter, Terry Dayvolt, Doris Horn, Jeff Willis and Mike Winge.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, staff.

MEMBERS ABSENT: Mike Moesner

MINUTES: Upon a motion by Doris Horn and seconded by Tina Baxter the Minutes of the last regular meeting held April 24, 2017, were approved as circulated. Upon a motion made by Doris Horn and seconded by Jeff Willis the Minutes of the no meeting held May 22, 2017, were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

SPECIAL USE:

DOCKET NUMBER: BZA-SU-17-10

APPLICANT & OWNER: Deaconess Hospital, Inc, by Mark Merrill, Director of Engineering & Maintenance

PREMISES AFFECTED: Property located on the W side of Epworth Rd approximately 145' S of the intersection formed by Epworth Rd. & SR 66, Ohio Twp, Tract 7 Gateway Center Minor Subdivision. 4011 Gateway Blvd. Complete legal on file.

NATURE OF CASE: Applicant request a Special Use (SU 8) from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County to allow an Improvement Location Permit to be issued for an electronic message board in an "M-1" Light Industrial Zoning district. *Advertised in the Standard June 15, 2017.*

Kent Brasseale, Attorney and Mark Merrill were present.

The Chairman called for a staff report.

Mrs. Rector stated they have all of the green cards from certified mail of notice of this meeting to the adjacent property owners. She said this is an existing hospital and the surrounding property to the north is C-4, to the east is Agriculture and C-4 & R-1D and to the south is Agriculture & M-1. She said the property to the west is part of the hospital and zoned M-1. She added there is no flood plain on the property and the hospital has an existing entrance on Gateway Blvd which is a private road off Epworth Rd. She explained the sign at the peak will be approximately 40' high and the sign cabinet will be 16' 4"

wide and 25' tall. She said the total square footage of sign cabinet will be 487 square feet; however, the square footage of the message board is 120 square feet. (9.5' x 12.7'). She added they have pictures of the proposed sign in their packets. She said Deaconess Hospital is doing a lot of construction right now and they are changing out all of their old signage and replacing it with new signage. She said there is an existing sign at this location and this will be a new message board taking its place.

The Chairman asked if the petitioner had anything to add.

Mr. Brasseale said Mrs. Rector covered everything and they just seek a Special Use.

Ascertaining there were no questions from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Winge made a motion the findings of fact be made as follows from the testimony and proposed use statement:

1. The USE is deemed essential or desirable to the public convenience or welfare.
2. The USE is in harmony with the various elements or objectives of the Land Use Plan for Warrick County.
3. The USE will not be a nuisance or serious hazard to vehicles, pedestrians, or residents.
4. The USE as developed will not adversely affect the surrounding area.
5. Adequate and appropriate facilities will be provided for proper operation of the USE.
6. The specific site is appropriate for the USE.

And the Application be approved in accordance to the application and plans on file, subject to the following conditions:

1. Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
2. Subject to all public utility easements and facilities in place.
3. Subject to an Improvement Location Permit being obtained for the new message board.
4. Subject to any required Building Permits being obtained.
5. Subject to the Special Use not being altered to become any other use nor expanded than that which was approved by the Board of Zoning Appeals.
6. Subject to no use of the words, "stop", "danger", "look", or any other word which would confuse traffic.

7. Subject to no revolving beams of light or strobe lights.

The motion was seconded by Doris Horn and unanimously carried.

Mrs. Rector said the approval will be ready on Wednesday and asked if they want to pick it up or have it mailed to them.

Mr. Brasseale said it could be emailed to him.

VARIANCE:

DOCKET NUMBER: BZA-V-17-11

APPLICANT: Ortiz Ayala LLC by Melvin Ortiz, Mbr.

OWNER: Ortiz Ayala LLC by Melvin Ortiz, Mbr. & Ubelhor Homes, Inc., Daniel Ubelhor, Pres.

PREMISES AFFECTED: Property located on the E side of Bell Road approximately 350' N of the intersection formed by Bell Rd & High Pointe Dr., Ohio Twp. Lots 40 High Pointe Center North 2-2 & Lot 1 High Pointe Centre 3 PUD. *8480 High Point Dr. & 3766 Bell Road.*

NATURE OF CASE: Applicant requests a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, IN to allow an Improvement Location Permit to be issued for the construction of a pedestrian bridge that would encroach into a recorded drainage easement for additional parking in a "C-4" General Commercial zoning district. *Advertised in the Standard June 15, 2017.*

Danny Ubelhor, Melvin Ortiz and Jeremey Elrod, Morley Corporation were present.

The Chairman called for a staff report.

Mrs. Rector said we have all of the green cards from certified mail of notice of this meeting to the adjacent property owners. She explained that lot 40 has an existing restaurant and lot 1 is currently vacant and will be used as additional parking at this time. She added at some point they will also construct a building on that lot. She said lot 40 is zoned C-4; lot 1 is zoned PUD/C-4 and all surrounding property is zoned C-4. She added a portion of the property along Bell Road lies within an "A" Flood Plain; however, the BFE has been determined and any building will need to be constructed 2' above the BFE. She stated lot 40 has an existing entrance off High Pointe Drive and lot 1 fronts on Bell Road. She said a commercial driveway permit will be required to access that lot. She added the applicants have appeared before the Drainage Board and received approval for the bridge to be placed over the drainage ditch. She said they supplied the Drainage Board with a Hold Harmless Agreement that was also accepted. She said you should see in the drawings what they plan to do. She said this will just be a connection to the two lots.

The Chairman called for comments from the applicant.

Jeremy Elrod said they are just trying to propose a pedestrian bridge to give them some extra parking for the restaurant. He said he has some aerial photos if they aren't clear of what is going on but he thinks it is pretty simple. He said they are here to answer any questions.

The Chairman called for questions from the Board. He then asked if this will be a wooden bridge.

Melvin Ortiz said it is a container – like a shipping box.

Danny Ubelhor said it will be a covered bridge look so when people walk through it they can't see the down the nasty ditch either way.

Jeff Valiant said that was a good idea.

Ascertaining there were no other questions from the Board and being no remonstrators present, the Chairman called for a motion.

Mike Winge made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.
2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is the success of the current use of the property coupled with the limited existing parking available creates a public safety issue requiring additional property to be acquired for parking purposes.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practical difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month

period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.

10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:

- a) Subject to an Improvement Location Permit being obtained.
- b) Subject to a Building Permit being obtained.
- c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- d) Subject to all utility easement and facilities in place.

Mrs. Rector asked Mr. Winge to also add:

- e) Subject to the Hold Harmless Agreement with the Drainage Board being recorded prior to an Improvement Location Permit being issued.

Mike Winge amended his motion and Doris Horn seconded. The motion unanimously carried.

Mrs. Rector said they could pick up their approval on Wednesday and reminded Mr. Elrod to be sure to track down the Hold Harmless to make sure it is recorded.

ATTORNEY BUSINESS:

Attorney Doll said they are making some calendar progress on the Prime Foods case. He said they have many different dates set for different cut offs and they have divided the case into two or three phases. He said the Judge just signed the order agreeing to their recommendation. He said the first real issue is something called “standing” where the Judge will be asked to determine if each of the complaining parties in the judicial review case is aggrieved – and that has to do with facts like how far away do they live from the site, do they live upwind or downwind and can you see the site, will the trucks affect your property or not, will they pass by your house or not; it is all facts. He said that is likely to take four days of trial and he thinks they will try that in October. He said they will do that complaining party by complaining party and more than likely Prime Foods will take the lead in that but we will be participating.

Jeff Valiant said that is only the ones named in the case, right.

Attorney Doll said it is and then once that is done then the court will be asked to determine based upon the record alone, whether a violation of anyone’s rights occurred or not. He said finally the court will deal with the final question in the case which is based upon other evidence has anyone’s rights been violated or not. He said that is the three phases they have agreed to and obviously the first one is who is in the case and that will probably be tried in October and decided sometime after. He said if they like he can get a copy of the signed court order to Sherri and she can email it to each of you so you have knowledge of where we stand in the case.

He said he fully anticipate – if he were on the other side of this – it would be his desire to depose each of you – to take your sworn statements about the case – what did you consider; what did you hear; what did you see; what did you read; what didn't you read; what didn't you consider. He said some of those cutoff dates to do that type of discovery are also in this order so it probably is a good idea he gets it to them. He said the Judge just signed it last week. He said they can't just sit here and wait to be subpoenaed for a deposition but at some point in time – they may have travel or vacation plans that may require them to be out of the county and so it would be nice if they knew when the deadline is for the depositions to be finished. He said he will get it to Sherri and they will put together some kind of communication and get it out to all the members of the Board.

Terry Dayvolt said so we can be ready to be deposed by – you and them?

Attorney Doll said very seldom does a lawyer depose his own client because if you don't know what your client is going to say before you put them on the stand then you aren't a very good lawyer. He said that means that each of us on a one on one basis will work together and he will go through with them the topics that are likely to come up. He said many of them may never have given testimony in a courtroom before and a deposition doesn't occur necessarily in a courtroom – it will probably occur in the conference room, but it is the same thing or equivalent to being under oath in a courtroom. He said he has a handout that he will give them and they will go through preparation of how to give a deposition. He said you will give honest answers but there are etiquettes about doing them to make it much more effective and fast. He said once we know the dates we will begin the work but as he said he expects them to want to depose all of them.

Terry Dayvolt said as far as the deposition will they have counsel with them.

Attorney Doll said he will be with them. He said he can't speak for him but he will understand in the preparation for a deposition. He said Sherri has already been deposed and he is pretty particular about preparing his witnesses for deposition. He said they will be fine.

Mike Winge said once we know if we are going to have it they will be able to sit down and talk with him first, correct.

Attorney Doll said absolutely, in fact he will be hounding them to death to talk to him before then. He said the first depositions are coming up July 27th if he recalls correctly. He said that is when all the Prime Food people are being deposed.

Jeff Valiant asked what kind of time frame he is thinking they would get to them; before the end of the year.

Attorney Doll said it has to be before the end of the year but he suspects it will be between August to October.

Jeff Willis said he is going to be out of town for several weeks in September and October.

Mike Winge said this has been a while ago.

Jeff Willis said it has been almost a year.

Attorney Doll said the hearing was in October of last year and he hopes they still all have their files and they can look over all of it again if they wish before the deposition.

Mike Winge said he no longer has his.

Attorney Doll said then he should review the recorded Minutes.

Mrs. Rector asked if anyone else needed them emailed to let them know.

Terry Dayvolt asked if they should bring everything they have.

Attorney Doll said no.

Mike Winge said they need to keep in mind that a lot of the stuff they got didn't even apply.

Terry Dayvolt said he understands that but that is the reason why he asked.

Attorney Doll said if there is something in particular they can talk to him about it in the preparation for the deposition but he is not going to say bring everything you have.

Mrs. Rector said the opposing side has copies of everything.

Attorney Doll said how this works is if they want to ask you a question about a document or a report or something that's in the record then they have to bring copies of that to the deposition. He said they have to mark it as an exhibit to the deposition and they have to give them a copy of it if they are the witness and then they have to give every attorney that is present at the deposition a copy before they can ask the question. He said then they get to ask you the question about the document they just handed you.

Terry Dayvolt said is that prior to the deposition.

Attorney Doll said no, it is at the deposition. He said if you do that times all of the documents that were in the ten hour hearing your deposition will take ten hours but they won't do that. He said they are going to want know more in tone to "were you pre-disposed for or against this before you ever heard anything".

Sherri Rector said they may ask "were you asleep".

Terry Dayvolt said he was sitting over here with his eyes closed listening.

Attorney Doll said he tried a case to an elderly Judge early in his career and you would try a case in his courtroom and he would sit behind the jury and you would swear he was asleep in the

middle of the trial. He said you could make an objection and without opening his eyes he would rule on the objection and cite law as to why you were right or wrong and never open his eyes. He said so you could say he was asleep in the trial but he was definitely not asleep because he knew exactly what they were talking about and knew every word and was prepared to rule on an objection that was being made by one of the lawyers during the trial. He said so the fact that your eyes are closed doesn't equate to the fact that you were asleep. He said a lot of times when you are in the glare of these lights you have to close your eyes because they are fatigued.

Mike Winge said that was a long night.

Attorney Doll said we will be prepared but it is coming.

Jeff Valiant told him thank you for the updates.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no other business the meeting adjourned at 6:25 p.m.

Jeff Valiant, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of the said Board at their monthly meeting held June 26, 2017.

Sherri Rector, Executive Director